



Challenges in accessing remedy for indigenous peoples in Asia

Parallel session

28 November

08:15-09:45

Organized by Asia Indigenous Peoples Pact (AIPP) and International Work Group for Indigenous Affairs (IWGIA)

Brief description: The session will be informed by research and recommendations by AIPP and IWGIA and also seek to provide NHRI and government perspectives on the challenges of ensuring access to remedy for indigenous peoples affected by business operations. Access to remedy – the third pillar of the UN Guiding Principles on Business and Human Rights, which is centered on those affected by business-related human rights abuses – is highly relevant and of great significance in the discourse on rights of indigenous peoples. However, the experiences of indigenous peoples in accessing remedy have been more negative than positive – be that in relation to State-based or non-State-based mechanisms. The theme of the 2017 Forum provides a good opportunity to discuss those experiences, including multi-stakeholder perspectives on how they can be made more positive.

Background: Indigenous peoples number around 260 million in Asia and disproportionately make up the majority of the poorest. They live in or occupy lands and territories rich in natural resources, which are valuable for businesses. Exploitation of land, forests, water and minerals for business operations thus have had profound and disproportionate impacts on the rights of indigenous peoples. They are mostly in the frontlines of the struggles to promote and protect human rights in business contexts and consequently face greater risks as well.

Access to remedy has many dimensions in context of the protection of and respect for indigenous peoples' rights. From the geographical perspective, remedial mechanisms span the local, national, regional and international levels, while from the procedural perspective they range from mediation style dispute resolution processes to judicial proceedings. Issues that arise consequently range from the effectiveness of international and State-based judicial and non-judicial mechanisms, to respect for indigenous peoples' customary institutions, processes and laws.

Indigenous peoples' access to remedy through State-based judicial mechanisms in the context of human rights harms caused by natural resource extraction and infrastructure projects is generally ineffective due to significant practical and legal obstacles that they face when attempting to access courts. State-based non-judicial mechanism tasked with addressing indigenous peoples rights frequently tend to lack sufficient capacity or awareness of indigenous peoples rights. Access to mechanisms at the regional and international levels is also challenging for most indigenous communities, and the lack of enforcement powers of these mechanisms limits their effectiveness.

In light of this reality, the potential of operational-level grievance mechanisms has gained increased attention. These mechanisms range from those established and run by companies to corporate engagement with indigenous peoples' own dispute resolution systems under their customary institutions and laws. However, many questions remain as to the potential of these mechanisms to effectively address the core concerns of indigenous peoples as well as how they should relate to the broader landscape of judicial and non-judicial mechanisms.

There is an urgent need for extensive discussion around access to remedy which is grounded on the perspectives of indigenous peoples. AIPP, IWGIA and other organizations have already conducted a comprehensive research on indigenous peoples' experiences with access to remedy, which has been published as a briefing paper and a book, with range of recommendations to enhance access to remedy for indigenous peoples.

Session objectives:

- Map out the mechanisms used by indigenous peoples in Asia for accessing remedy and challenges and advantages of those mechanisms.
- Draw a comparison between State-based and non-State-based mechanisms on their use or lack thereof.
- Understand the discourse on access to remedy in works of NHRIs and National Action Plan drafting process

Key discussion Questions:

- What are the commonly used mechanisms used by indigenous peoples in accessing remedy? What are the challenges and advantages of those mechanisms?
- How have non-State-based mechanisms (grievance mechanisms of businesses, multi-stakeholder initiatives, etc.) fared compared to State-based judicial or non-judicial mechanisms?
- How is the discourse on access to remedy in the works of NHRI and National Action Plan drafting by the Government?
- Can NHRIs and NAPs contribute in enhancing access to remedy?

Speakers:¹

- **Prabindra Shakya**, Human Rights Campaign and Policy Advocacy Programme Coordinator, AIPP representative (**moderator**)
- **Gladson Dungdung**, General Secretary, Jharkhand Human Rights Movement
- **Santos Mero**, Cordillera Peoples Alliance, Philippines
- **Shankar Limbu**, Human Rights Lawyer, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)
- **Surya Deva**, Chairperson, UN Working Group on Business and Human Rights

Format: The session will be a moderated panel discussion beginning with brief overview from the panelists focusing on the situation (practices and challenges) of accessing remedy in the contexts of their works with brief visual presentations. The panelists will be presenting about their real case studies from the ground, inquiry reports (NHRI) or national action plan drafting process (Thailand).

The initial presentations will be followed by questions from the moderator to the panelists on recommendations and way forward to enhance access to remedy in their respective engagement.

There will be time allocated for queries, suggestions or comments from the participants.

Links to background material:

- Business and Human Rights: Indigenous Peoples' Experiences with Access to Remedy <http://iphndefenders.net/business-human-rights-indigenous-peoples-experiences-access-remedy/>
- Mining, the Aluminum Industry and Indigenous Peoples: Enhancing Corporate Respect for Indigenous Peoples' Rights <https://aippnet.org/report-calls-on-aluminium-industry-to-respect-indigenous-peoples-rights/>

¹ Further information on speakers provided in Annex

ANNEX. SPEAKERS SHORT BIOS.

Prabindra Shakya

Human Rights Campaign and Policy Advocacy Programme Coordinator, Asia Indigenous Peoples Pact

Prabindra Shakya is a human rights activist from indigenous Newar community of Nepal. He has been engaged in promoting and protecting the rights of indigenous peoples and marginalized communities, including in post-conflict transitional justice processes, for the past decade. He currently leads the Human Rights programme in the Asia Indigenous Peoples Pact (AIPP) in Thailand and sits in the Steering Committee of the US-based Coalition of Human Rights in Development and the Community Empowerment & Social Justice Foundation in Nepal. He specializes in human rights in development finance and business contexts and impacts of international investments on the rights and livelihoods of indigenous peoples and marginalized communities.

Shankar Limbu

Human Rights Lawyer, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)

Human Rights and practicing Lawyer working to protect, promote and defend Indigenous Peoples and Communities who are marginalised and voiceless. More than 15 years of defending indigenous people's rights against aggressive development including business and human rights. Experience of litigation, research and assisting communities to assert their rights using legal instrument based strategy. I have worked as an expert to prepare National Action Plan on the Implementation of Indigenous Peoples Rights that included UNDRIP and ILO Convention. Publication of various research and reports.

Gladson Dungdung

General Secretary, Jharkhand Human Rights Movement

Gladson Dungdung is a Human Rights Defender, Researcher and Writer. He has done fact finding in more than 500 cases and intervened legally in more than 200 cases of gross human rights violations. He is author of several books including Endless Cry in the Red Corridor, Mission Saranda and Whose Country is it Anyway?

Santos Mero

Deputy Secretary General, Cordillera Peoples Alliance

A member of the Ibaloi tribe, born and raised in the mining town of Itogon, Benguet, where Benguet Corporation (BC), Philex Mines, and several other mining firms have open pit, bulk mining and underground mining for 100 years. In 2006 to present as the Deputy Secretary General of CPA and as a regional executive member giving services to our chapters in the provinces. Coordinator and convener of the Serve the people brigade for disaster and relief operation, a member of the national council of Kalikasan our national environment alliance. Current spokesperson for Defend Patrimony-Cordillera region, a broad network of environment advocates. And currently co convener k and spokesperson of Amianan Salakniban a broad network against destructive mining and Human Rights establish in December 14 – 15, 2011. And at present also the convener of Save The Abra River Movement campaign.